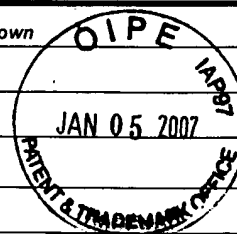


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Effective on 12/08/2004.
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).**FEE TRANSMITTAL
for FY 2005**☐ Applicant claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT** (\$) 500

Complete if Known

Application Number	10/812,358
Filing Date	March 30, 2004
First Named Inventor	Yojiro Kinoshita
Examiner Name	Erika P. Garrett
Art Unit	3636
Attorney Docket No.	001309.00059

**METHOD OF PAYMENT (check all that apply)**☐ Check ☐ Credit Card ☐ Money Order ☒ None ☐ Other (please identify) : _____☒ Deposit Account Deposit Account Number: 19-0733 Deposit Account Name: Banner & Witcoff, LTD.

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee☒ Charge any additional fee(s) or underpayments of fee(s) ☒ Credit any overpayments

Under 37 CFR 1.16 and 1.17

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee(\$)	Fee(\$)	Small Entity Fee(\$)	Fee(\$)	Small Entity Fee(\$)	
Utility	300	150	500	250	200	100	_____
Design	200	100	100	50	130	65	_____
Plant	200	100	300	150	160	80	_____
Reissue	300	150	500	250	600	300	_____
Provisional	200	100	0	0	0	0	_____

2. EXCESS CLAIM FEES**Fee Description**

Each claim over 20 (including Reissues)

Each independent claim over 3 (including Reissues)

Multiple dependent claims

Total Claims	Extra Claims	Fee(\$)	Fee Paid (\$)
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_____ - 20 or HP= _____ x _____ = _____

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee(\$)	Fee Paid (\$)
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_____ - 3 or HP= _____ x _____ = _____

HP = highest number of independent claims paid for, if greater than 3.

Small Entity

Fee (\$)	Fee (\$)
-----------------	-----------------

50 25

200 100

360 180

Multiple Dependent Claims

Fee (\$)	Fee Paid (\$)
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3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
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_____ - 100 = _____ / 50 = _____ (round up to a whole number) x

= _____

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): Appeal Brief**Fees Paid (\$)**\$500**SUBMITTED BY**

Signature		Registration No. (Attorney/Agent)	33,568	Telephone	202-824-3000
Name (Print/Type)	Susan A. Wolfe	Date	01/05/07		

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:

Yojiro Kinoshita et al.

Serial No.: 10/812,358

Filed: March 30, 2004

For: BACKREST FOR CHAIR

) Atty Dkt No. 001309.00059
)
)
) Confirmation No. 4108
)
) Examiner: Erika P Garrett
)
) Group Art Unit: 3636
)
)

BRIEF ON APPEAL

Customer Service Window
401 Dulany Street
Alexandria, VA 22314

Sir:

Pursuant to 37 C.F.R. § 41.37, Appellant submits this Appeal Brief to the Board of Patent Appeals and Interferences in response to the final rejection mailed on August 10, 2006. A Notice of Appeal was timely filed on November 8, 2006.

I. Real Party in Interest

The real party in interest is Kokuyo Co., Ltd, the owner of the entire right, title and interest in and to the subject application.

II. Related Appeals and Interferences

Appellants are unaware of any appeals or interferences related to the subject appeal

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III. Status of the Claims

Claims 1, 2, 5, 7, 9, and 11-17 are pending. Claims 3, 4, 6, 8, and 10 are canceled. Claims 1, 2, 5, and 12-17, which are under appeal, stand finally rejected and are found listed in the appendix. Claims 7, 9, and 11 have been withdrawn as directed to non-elected species but would be rejoined if claim 1 is found allowable. No claim is allowed.

IV. Status of Amendments After Final Rejection

No amendment after final rejection has been filed.

V. Summary of Claimed Subject Matter

The present invention is directed to backrest for a chair. References are made to the paragraph numbers in the application as published 2005/0104434. Fig. 6, copied below for demonstration purposes, is a view of the back side of the backrest in accordance with an aspect of the invention.

Independent claim 1 is directed to a backrest (Fig. 1, 1) for chair having frame elements (21, 22) arranged in pairs at right and left sides of the backrest. [0038] A flexible support member (3) bridges the frame elements (21, 22) to support a load of a body of a seated person. [0036] [0038]. The flexible support member (3) bends concaved rearward. [0044] and Fig 7. An adjust mechanism (right side of Fig. 6, includes 31, 213, 214, for example) can change a degree the support member (3) is bent concaved rearward and can maintain the degree the support member is bent concaved rearward against the load of the seated person. The adjust mechanism is at least one engaging structure between a pin (Fig. 6, item 31, for example) mounted on either one of the support member (3) and the frame element (Fig 6, 21) and at least one engaging hole (213) formed on the other of the support member (3) and the frame element (Fig. 6, 21), and an engaging portion (214, 215). [0041] [0042] The pin can engage the engaging hole in various positions. [0045]

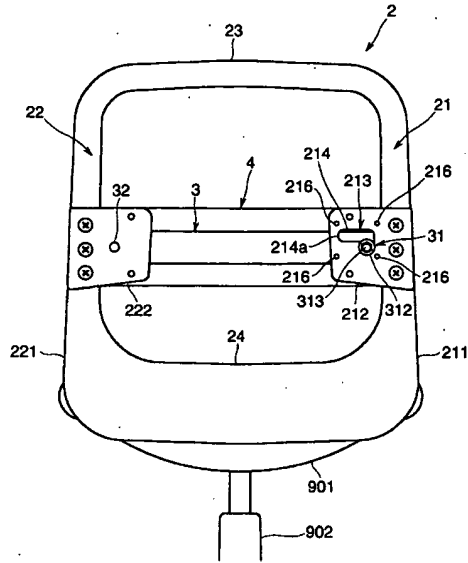


Fig. 6

The figure on the left below, a portion of Fig. 8, shows a side view of the backrest with the flexible support member (3) in a flat or non-flexed position and the figure on the right, a portion of Fig. 7, shows a side view of the backrest with the flexible support member (3) in a flexed position wherein the flexible support member 3 is bent concaved rearward.

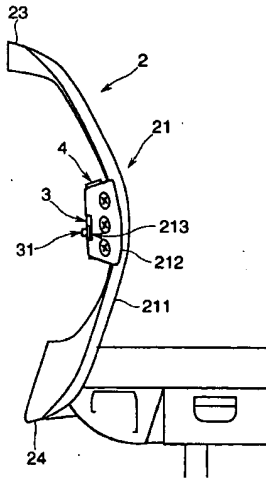


Fig. 8

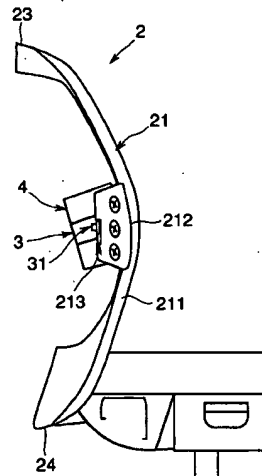
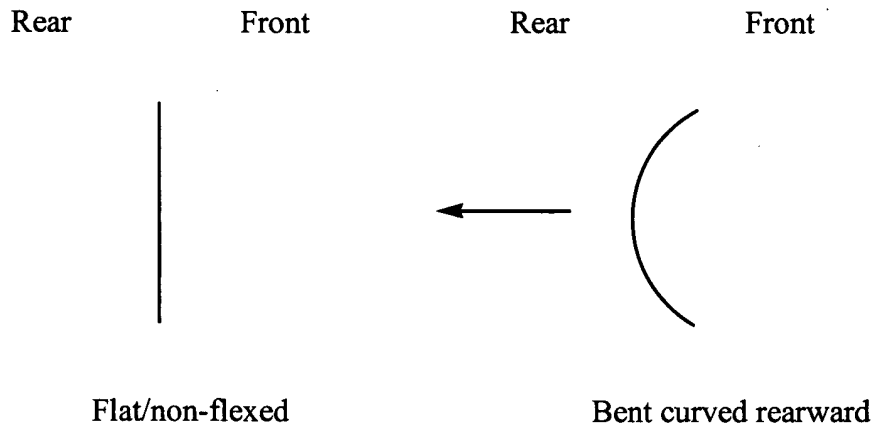


Fig. 7

Or, if looking from the top of the backrest, the left schematic shows the flexible supporting element (3) in a flat or non-flexed position, the right schematic shows the flexible supporting element (3) bent curved rearward or in a flexed position:

Top View



When a person sits in the chair, the back of the person rests against the support member (3). The support member (3) can be adjusted (bent rearwardly) so that the back of the person is wrapped by the concaved curved part of the flexible support member. Support member (3) is not a lumbar support which projects forwardly from the backrest.

The present invention can change the degree the support member is bent by changing the position in the frame element at which the end portion of the support member is held. For instance, the degree the in a rearward direction of the support member can be varied by operating the pin to engage with the desired engaging edge portions. Therefore, the length of the support member does not need to be changed, allowing the structure of the support member to be simple and flat. Thus, a backrest with a smooth finished surface can be obtained when the support member is covered by an upholstery member. Moreover, a simple handle for operation by the user can be used with the pin protruding from the upholstery member.

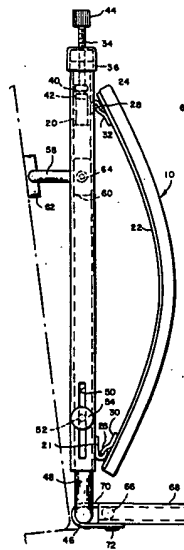
VI. Grounds of Rejection to be Reviewed on Appeal

Claims 1-2 and 12-14 stand rejected under 35 U.S.C. 102(b) as being anticipated Sheldon (U.S. 4,153,293). Claims 15-17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Sheldon (U.S. 4,153,293) in view of Peterson (U.S. Patent 6,220,661).

VII. Argument

A. Sheldon does not anticipate claims 1-2 and 12-14.

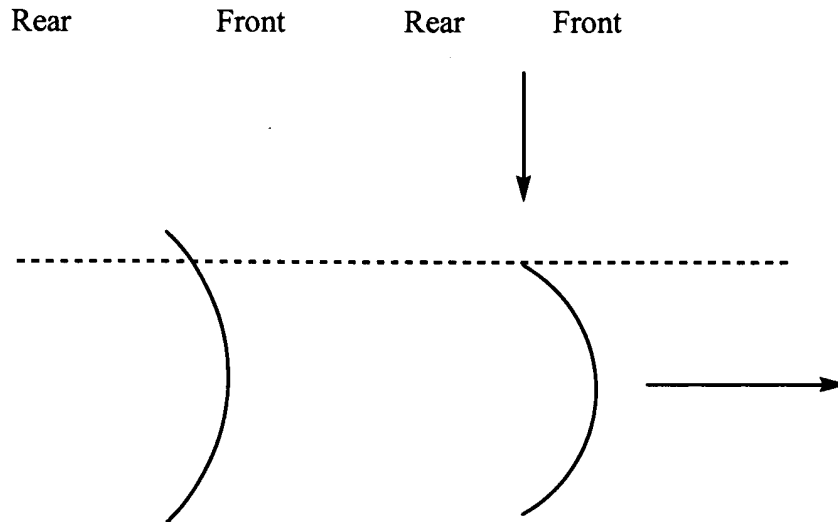
Sheldon describes a back support that adjusts between the top and bottom frame members. The top of the back support is moved downward so that the backrest is bowed “convexly forwardly with respect to the frame.” The adjust mechanism is a screw bolt which is turned to raise or lower bar 20.



Sheldon does not teach or suggest a support member that bridges the frame elements and that is bent “concaved rearward” to support a load of a body of a seated person. Sheldon instead describes that the backrest is bowed “convexly forwardly with respect to the frame.” See column 2, lines 30-31. That is, the backrest adjusts forward against the back providing a lumbar-type support. The bending occurs in a vertical direction between top and bottom frames instead of a

horizontal direction between side frames as occurs with the support member of the instant claims. In addition the bending is forwardly (similar to a lumbar support), not rearwardly.

Side views of the bending of Sheldon: The top of the back support is moved downward.



Sheldon further does not describe an adjust mechanism having a pin that can engage an engaging hole in various positions. Instead Sheldon uses a screw bolt (not a pin) which is turned to change the position of bar 20.

Sheldon does not teach each and every element of the instant claims and thus does not anticipate the instant claims. Reversal of the rejection is requested.

B. The Combination of Sheldon and Peterson Fails to Set Forth a *Prima Facie* Case of Obviousness.

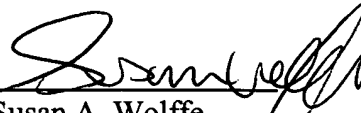
Claims 15-17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Sheldon (U.S. 4,153,293) in view of Peterson (U.S. Patent 6,220,661). Peterson is provided to show that chairs can be upholstered. Peterson does not teach or suggest a flexible support member that bends concave rearward. Peterson does not remedy the defects of Sheldon discussed above.

The Office Action has failed to set forth a *prima facie* case of obviousness of claims 15-17. Reversal of the obviousness rejection is respectfully requested.

Respectfully submitted,

BANNER & WITCOFF, LTD.

Date: January 5, 2007

By: 
Susan A. Wolfe
Registration No. 33,568

Customer No. 22907

1001 G Street, N.W.
Washington, DC 20001-4597
(202) 824-3000 (telephone)
(202) 824-3001 (facsimile)

CLAIMS APPENDIX

1. A backrest for chair comprising

frame elements arranged in pairs at right and left sides,

a flexible support member that bridges the frame elements to support a load of a body of a seated person, wherein the flexible support member bends concaved rearward; and

an adjust mechanism that can change a degree the support member is bent concaved rearward and that can maintain the degree the support member is bent concaved rearward against the load of the seated person;

wherein the adjust mechanism is at least one engaging structure between a pin mounted on either one of the support member and the frame element and at least one engaging hole formed on the other of the support member and the frame element, and an engaging portion, wherein the pin can engage the engaging hole in various positions.

2. The backrest for chair described in claim 1, wherein the adjust mechanism is arranged on at least one of the right and left sides; and

wherein the degree the support member is bent concaved rearward is varied by fastening one end side of the support member to one of multiple different portions of the frame element located at a corresponding side.

5. The backrest for chair described in claim 1, wherein

the engaging hole has multiple engaging edge portions that make an engagement with the pin to hold the pin when the load of the seated person is applied to the support member; wherein the

engaging edge portions communicate with each other; and wherein the pin can be changed from a state of engaging an engaging edge portion to a state of engaging another engaging edge portion by moving the pin along the engaging hole.

12. The backrest for chair described in claim 1, wherein the adjust mechanism has an operating portion to operate the support member in order to change the degree the support member is bent concaved rearward and the operating portion is exposed to a side portion of a back face.

13. The backrest for chair described in claim 1, wherein the support member is arranged at a height generally corresponding to a lumber of the seated person.

14. The backrest for chair described in claim 12, wherein the support member is arranged at a height generally corresponding to a lumber of the seated person.

15. The backrest for chair described in claim 1, further comprising a covered generally bag-shaped upholstery member.

16. The backrest for chair described in claim 13, further comprising a covered generally bag-shaped upholstery member.

17. The backrest for chair described in claim 14, further comprising a covered generally bag-shaped upholstery member.

EVIDENCE APPENDIX

No evidence is relied upon in this Appeal Brief.

RELATED PROCEEDINGS APPENDIX

There are no related proceedings and therefore no final decisions have been rendered in related proceedings.